IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.No. 2619 of 1996 and WRIT PETITION No. 2620 OF 1996

W.P.NO.2619 OF 1996

M. Muthusami Thevar (deceased)

1. N. Sundaram,
Sree Thevar Shopping Complex,
153, Avanashi Road,
Coimbatore 18.

2. Dhanapalan,
20, Syrian Church Road,
Coimbatore 1.

Petitioners were brought on
record as LRs of the deceased
petitioner as per order of
court dt.4.6.02 in WMP.No.
13859/2002. .. Petitioners

-Vs-

1. The Regional Transport Authority,
Coimbatore.

2. The State Transport Appellate
Tribunal, Madras 104.

3. S. Sivabagyam,
119, Sivasubramaniam Road,
RS Puram, Coimbatore.

4. M. Doraiswami,
50, Damu Nagar II Street,
Ramanathapuram, Coimbatore. .. Respondents

W.P.No.2620 OF 1996

S. Sivabagyam,
119, Sivasubramaniam Road,
RS Puram, Coimbatore. .. Petitioner

Vs.

1. The Regional Transport Authority,
Coimbatore.

2. The State Transport Appellate
Tribunal, Madras 104.

3. M. Muthusami Thevar
Devar Transport Bus service,
159, Avanashi Road,
Coimbatore 18.

4. M. Doraiswami,
50, Damu Nagar II Street,
Ramanathapuram, Coimbatore. .. Respondents

Petitions filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

!For Petitioners
in WP.2619/96 : Mr.M. Palani

^For Respondents 1-2
in WP.2619/96 : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

Respondents 3-4 : Mr.N. Gopalakrishnan
in WP.2619/96

:J U D G M E N T

One Mr. Muthusami Thevar (now deceased) had a stage carriage
permit from Ondipudur to Maniyakarampalayam. Since he had become old, he
decided to transfer permit in favour of his daughter-in-law. Both of them
filed joint application dated 26.1.1993 before the Regional Transport
Authority, Coimbatore seeking permission to transfer the permit along with the
vehicles bearing Registration No.TN.37.D.9878 and the spare bus TDV 3569. The
Regional Transport Authority by order dated 8.3.1993 permitted transfer of the
permit. At that stage, M. Duraisamy, son of Muthusamy Thevar through first
wife, filed Appeal No.92 of 1993. The appeal was allowed by the Appellate
Authority by order dated 25.7.1995 solely on the ground that the appellant in
the appeal had not been given opportunity of hearing. The Appellate Court
accordingly remanded the matter to the original authority for fresh disposal.
Muthusamy Thevar filed W.P.NO.2619 of 1996 and the daughter-in-law
filed the connected W.P.No.2620 of 1996. During pendency of both the writ
petitions, Muthusamy Thevar having been died, petition for substitution has
been filed by his two other sons through the second wife.

2. For convenience, deceased Muthusamy Thevar is hereinafter referred to as the Transferor, the writ petitioner in W.P.No.2620/96 (daughter-in-law of Muthusamy Thevar) is referred to as Transferee and the contesting respondent in both the writ petitions, namely Mr.M. Duraiswami is referred to as the Objector.

3. At this stage it is desirable to notice that a suit has been filed by M. Muthusamy, which is pending before the Civil court in Coimbatore.

4. The main contention raised in both the writ petitions is to the effect that as per the provisions contained in the Motor Vehicles Act and the Rules made thereunder, notice is required to be issued to the applicant seeking permission to transfer the permit and the vehicle and no notice is contemplated to be issued to any other third party and as such the objector had no locus standi to raise any objection nor file any appeal. It is further contended that as a matter of fact notice had been issued to the objector.

5. It is necessary to notice various provisions contained in the Motor Vehicles Act and the Rules made thereunder :-

Section 82(1) of the Act is as follows :-

 82. Transfer of permit.- (1) Save as provided in sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not,

without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

Rules 208, 209 and 211 of the Tamil Nadu Motor Vehicles Rules are as follows :-

 208. Permit transfer of. - When the holder of a permit desires to transfer the permit to some other person under sub-section (1) of section 82, he shall together with the person to whom he desires to make the transfer make joint application in writing to the Transport Authority by which the permit was issued, setting forth the reasons for the proposed transfer. Fee for transfer of permit shall be as prescribed in the Table under rule 279.

209. Particulars of premium etc.- On receipt of an application under rule 208 the Transport Authority may require the holder and the other party to state in writing whether any premium, or payment of other consideration arising out of the transfer, is to pass, or has passed between them and the nature and amount of any such premium, payment or other consideration.

211. Summoning of parties.- The Transport Authority may summon both the parties to the application for the transfer of a permit to appear before

it. If the application raises doubts or suspicion of trafficking in permits or involves transfer to a person who in the opinion of the Transport Authority is not qualified and eligible for the grant of a new permit, the application shall be rejected.

6. A perusal of the aforesaid Rules makes it clear that the application is to be filed by the intending transferor and the intending transferee. Similarly under Rule 211, the Transport Authority may summon both the parties to the application, if any doubt or suspicion is raised regarding trafficking in permit or if the transfer would be in favour of a person who is not qualified and eligible for the grant of a new permit. Rule 211 makes it clear that an application is to be rejected if there is any trafficking in permit or the transfer is to a person who is not qualified to hold a new permit.

7. A combined reading of the provisions contained in Section 82(1) and the Rules makes it clear that only with a view to ascertain about the question relating to trafficking in permit or qualification of the transferee for the grant of new permit, enquiry is to be held and notice is to be issued. The provision do not contemplate issuance of any notice to any third person claiming right over the vehicle/ permit.

8. The view expressed above, receives ample support from the earlier decisions of this Court rendered under the old Motor Vehicles Act and the Rules. In W.P.No.311 of 1962 disposed of on 12.3.1964, a joint application had been made by the owner and the proposed transferee for transfer of permit to the latter. Objection was raised by another transport operator. The Original Transport Authority had granted permission, but revision was filed against the decision of the Original Transport Authority by such operator. The Revisional Authority held that there was no necessity to effect transfer of permit. It was observed by the learned single Judge as follows :

 . . . But unlike grant of permit, in the case of transfer of permit except to the extent of making representations by an existing operator with a view to assist the prescribed authority to come to a proper conclusion, I do not see what other interest such an existing operator can possibly have in connection with that application. The Tribunal proceeded on the footing that the interest which the representator, the first respondent herein, was that, if permission for transfer was with held and the permit as a result had to be surrendered the representator would probably be in a position to contest for the permit when a notification for grant of it is made. I think this interest is quite unsubstantial and rather diffused. The right to make representations in an application for a permit is based upon different considerations. I do not think that by reason of Rule 199, the representations will have any right beyond making representations before the prescribed authority.
There is also the other aspect.
Once permission is granted, as stated by the learned Advocate General the contract is completed. There is no statutory indication that the contract which has come into effect will still be subject to the powers of revision

under Section 64-A. This will be apparent if this is contrasted with the terms of Section 59 itself to the effect that a transfer cannot take effect without the permission of the prescribed authority. In other words, a transfer of permit is only subject to permission being granted therefor, the deeming effect of rule 199, therefore, in my view cannot be carried further than it is strictly necessary. That rules merely by applying the procedure under Section 5 7 read with Section 47 enables a representator to make representations why permission should not be granted for transfer. Once that representation is made the representator has no further interest, merely because his representation is not accepted and permission is granted. I do not think that the representator can be regarded as a person interested or aggrieved.

9. In C.R.P.Nos.1052 of 1982 and 4561 of 1983 disposed of on 15-4-1 994, Justice D. Raju (as His Lordship then was) observed :-

. . . In the light of the above, as the rules stood at the relevant point of time when the petitioner/objector objected to the transfer, he had no right or locus standi whatsoever to make any objection to the transfer he being not a party to the joint application filed and consequently could not be said to be a person aggrieved to file any appeal or the revision under the Provisions of the Motor Vehicles Act, 1939.

10. A comparison of the old Rules and the present Rules rather makes it amply clear that under the present Rules there is no scope for giving opportunity of hearing to any other person including an operator on the existing route. The Rules do not contemplate giving of any opportunity of hearing to a third party raising objections relating to title or ownership over the vehicle in question.

11. Learned counsel appearing for the contesting respondent, however, submitted that the earlier decisions, which were rendered under the old Rules, are not applicable and moreover those decisions have not taken into consideration the right of appeal available under the Rules. There is no doubt that appeal can be filed by a person aggrieved. If it is already held that there is no scope of opportunity of hearing to any third party and the third party did not have any locus standi to be heard before the authority, it cannot be construed that such a third party can be a person aggrieved.

12. It is also contended that as a matter of fact notice had been issued by the original authority to the present contesting respondent and therefore, without service of notice, the matter could not have been decided. Since the person had no right under the Act or the Rules to raise any objection, even if any direction was issued to issue notice that is of no consequence and issuance of such notice would not have conferred right on the contesting respondent under the Act or the Rules.

13. Once it is held that notice is not required to be issued to third party claiming right over the vehicle/permit and notice was only required to be issued to the applicants and the objector had no locus standi to raise any objection, such a person cannot be treated as a person aggrieved

to file any appeal. The appeal at the instance of such objector was not maintainable. On this ground alone, the writ petitions are bound to be allowed and the order of the appellate authority is liable to be quashed.

14. The alternative submission made by the counsel for the petitioner to the effect that in the facts and circumstances of the case it must be taken that the contesting respondent had notice is also of substance. It appears that registered notice had returned unserved. It further appears that there is an endorsement to the effect regarding intimation of registered letter in the address, but obviously nobody turned up to claim the registered letter. In other words, the addressee avoided to receive the letter. In the peculiar circumstances of the case it must be taken that the addressee had avoided to receive the notice, and therefore, the notice can be said to be sufficient.

15. Thus, in either view of the matter, the order passed by the appellate authority cannot be sustained and is liable to be quashed. Since permission having been granted by the original transport authority,it must be taken that permit stood transferred in the name of the transferee. It is however made clear that any dispute relating to right, title and interest in respect of the transport business or the vehicle in question has not been decided in these writ petitions and can be decided before the appropriate Civil Court in accordance with law.
13. In the result, both the writ petitions are allowed. No costs.

Index : Yes
Internet : Yes

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